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COMMODITIES IN FOCUS

WEEKLY - ISSUE 152

PLEON LIMITED V LEONIS YACHTING LIMITED ("THE MALTESE FALCON") [2025] EWHC 3144 (COMM)

BACKGROUND

The Maltese Falcon (the "Yacht") was sold by the Claimant, Pleon Limited (the "Seller"), to the Defendant, Leonis Yachting Limited, (the "Buyer"), by way of a Memorandum of Agreement (the "Agreement for Sale") on an amended Mediterranean Yacht Brokers Association form with Addenda.

Delivery under the Agreement for Sale was to take place on 7 April 2022 and, by an "Agreement for Access" annexed to the Third Addendum to the Agreement for Sale, the Buyer agreed that, having purchased and taken delivery of the Yacht, it would grant the Seller access to the Yacht between 20 April 2022 and 20 June 2022. No hire was to be charged for this use and access.

While under sail during the Seller's use and access, the starboard generator of the Yacht suffered a breakdown which immobilised the Yacht and cut short the use and access period from and including 9 May 2022.

AGREEMENT FOR SALE

Pursuant to the Agreement for Sale, the Buyer was entitled to:

- + Inspect all documents relating to the construction, registration, classification, maintenance, repair or improvement of the Yacht and any documents relating to the Yacht's compliance with class or flag;
- + Utilise a sea trial of a maximum of four hours' duration prior to 7 March 2022; and
- + Carry out a condition survey.

Where the sea trial or the condition survey identified defects that would affect the operational integrity of the Yacht or her machinery or rendered the Yacht unseaworthy, the Buyer could issue a written notice requiring the Seller to make good those defects. The Buyer served no such written notice.

The Agreement for Sale included a term requiring that the Yacht "[...] be delivered safely afloat [...] in the same condition (fair wear and tear excepted) and as outfitted as at the time of the Sea Trial, if any, and the Condition Survey [...]".



It also excluded “[...] every representation, condition, warranty or other undertaking whether expressed or implied by statute, common law, custom or otherwise howsoever in relation to [the Yacht], fault or errors in her description or her quality or her fitness, for any particular purpose [...]” and contained a form of ‘entire agreement clause’.

AGREEMENT FOR ACCESS

By contrast, under the Agreement for Access the Buyer was obliged to comply with clause 3.3 which provided as follows:

“The [Yacht] and her tenders and gear shall be in commission and in full working order and [the Yacht] shall be seaworthy, crewed in accordance with her safe manning certificate, compliant with her Flag State registration requirements, relevant IMO regulations and any applicable Classification Society Rules”.

ISSUE

The question put first to the Tribunal and then, following an appeal on a point of law under section 69 of the Arbitration Act 1996, the High Court was whether there ought to be implied into the Agreement for Access a term that the Buyer’s obligations were conditional on the Yacht’s hull and machinery having been properly maintained on delivery under the Agreement for Sale.

The Tribunal asked itself whether “without the term, the contract would lack commercial or practical coherence”.

CONCLUSION OF THE TRIBUNAL

The Tribunal found that the period between delivery to the Buyer and the commencement of the period of access by the Seller was too short “to effect any transformative maintenance” and that it was “striking” that it was not practically possible for the Buyer to deliver the Yacht under the Agreement for Access in a condition that was materially different from that in which it had been delivered to them under the Agreement for Sale.

As such, the Tribunal concluded by a majority (Sir Bernard Eder dissenting) that a term was to be implied into the Agreement for Access which qualified the Buyer’s obligation under clause 3.3 because without that qualification “the contract would lack commercial or practical coherence”.

CONCLUSION OF THE HIGH COURT

The High Court allowed the Seller’s appeal but for reasons which differed from both those of the majority and minority of the Tribunal.

While the High Court judgment acknowledges that the standard set by the language of clause 3.3 is unqualified, it clarifies that the question with which the appeal is concerned is “whether [...] a qualification to the circumstances in which that standard would apply is ‘necessary’ [...] for the agreement between the parties to have business efficacy”.

Unlike the Tribunal, the High Court considered this question through the lens of the contractual purpose of clause 3.3 which, it found, was to allocate risk. The Court concluded that:

- + There was a risk that the Yacht would be unseaworthy when she was delivered to the Buyer under the Agreement for Sale.
- + If the Yacht was unseaworthy at the time of the sea trial and any condition survey and the parties still proceed to delivery under the Agreement for Sale, the risk that the Yacht is unseaworthy at delivery to the Buyer is with the Buyer.
- + Clause 3.3 demonstrates that the parties had decided that when the Yacht was delivered to the Seller under the Access Agreement, the risk that the Yacht was unseaworthy remained with the Buyer.

Understood in this way, the Court held that there is no lack of business efficacy and no room for the implied term argued for by the Buyer. Under the Agreement for Access the parties had expressly agreed that the Buyer, not the Seller, would be left with the financial consequences if the Yacht was unseaworthy during the Seller’s period of use and access and this is so even if the reason for that unseaworthiness was because the machinery had not been properly maintained by the Seller before the Yacht was sold and delivered to the Buyer.



COMMENT

This case is a reminder of the importance of ensuring that contractual terms are drafted carefully and accurately to reflect the interests and intentions of the parties. As witnessed in this case, the Court will tread cautiously when asked to imply terms into a contract and, before doing so, it will look closely at the terms which have been expressly agreed between the parties. The Court will not use implied terms to re-write a contract in a way which may be considered more reasonable and it will only imply a term if doing so is necessary to make the contract work.

Therefore, the Court will not imply a term into a contract if it can operate as it was agreed between the parties, even if this may result in a seemingly uncommercial (and possibly unintended) outcome for one or both of the parties.

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